U.S. Department
of Transportation
**Maritime
Administration**

Administrator

400 Seventh Street, S.W.
Washington, D.C. 20590

February 7, 2002

Vice Minister of Communications Hong Shanxiang
Ministry of Communications
11 Jianguomennei Avenue
Beijing, People's Republic of China
FAX No. (86 10 6) 5292345

Dear Mr. Minister:

The following are preliminary views of the United States Government on the "Regulations on International Maritime Transportation of the People's Republic of China" (hereinafter "the Regulations") that were to take effect on January 1, 2002, as well as on the Notice of the Ministry of Communications on the Issuing and Implementing of the Regulation that is dated January 12, 2002.

Based on an initial review, we believe that the Regulations would effectively control and restrict the activities of non-Chinese commercial entities, thereby prejudicing the interests of China's trading partners. In their present form, the Regulations empower Chinese authorities to control liner service pricing terms, including service contract prices, and appear to impose restrictive licensing, registration and other requirements on business activities of non-Chinese companies. Instead of allowing the market to function, the Regulations appear to substitute the Chinese government as marketplace arbiter, with a view to restricting the activities of non-Chinese maritime companies.

This restrictive regulatory tenor is especially anomalous because Chinese companies such as COSCO, CSG and SINOTRANS have clearly benefited from their ability to work freely in the United States and in other major markets around the world. As companies with strong links to the Chinese government, these firms must surely have made their authorities aware of the advantages and efficiencies inherent in a free-market environment. Moreover, although the Ministry of Communications has linked the Regulations to China's accession to the World Trade Organization, it has not provided WTO trading partners a reasonable period for comment before the Regulations are implemented (as required by Section 2(C) of China's WTO Accession Protocol). More critically, the Regulations provide for less market access than permitted before China's accession.

We are particularly disturbed that the United States was not afforded the opportunity to comment in advance on the Regulations, despite our repeated requests to do so and despite our long record of raising our concerns over China's policy with respect to shipping market access

and regulation. We note that we have a long record of raising our concerns over China's policy with respect to shipping market access and regulation. As you know, we have held numerous discussions since the conclusion of the bilateral maritime agreement of 1980 in which the United States raised concerns over China's shipping policy. In a number of instances, China undertook commitments to remove restrictions that impeded U.S. carriers' operations. These commitments were summarized in bilateral minutes or memoranda and in the second agreement that our two countries concluded, the maritime agreement that was signed in December of 1988 and remained in effect for almost ten years. In addition, we refer to communications between our governments on market access and regulatory issues, including the letter that Acting Deputy Maritime Administrator Bruce J. Carlton sent to Director General Su Xingang of the Ministry of Communications on November 28, 2001, and two letters from Maritime Administrator Clyde J. Hart, Jr. to Vice Minister of Communications Hong Shanxiang, dated January 22, 1999, and January 20, 2000, respectively.

We urge China to suspend indefinitely the implementation and enforcement of the Regulations, and the application of any penalties that are contemplated in them, and to postpone issuance of implementing rules so that it may bring its fundamental policies into harmony with the standards that prevail in the rest of the world's shipping trades. This will allow time for the Chinese government to seek the views of its trading partners and the commercial interests that in fact comprise the shipping market. We emphasize that the restrictive, anti-competitive system of licensing and registration requirements that appears to maximize the possibilities of levying fines and penalties is worlds away from the market conditions that have richly benefited the operations of Chinese maritime companies such as COSCO, SINOTRANS, and CSG in the United States. We see no "special China case" that can be used to justify the restrictive regime that is contemplated by the Regulations. If China wishes to benefit from the rules of the international market, then clearly it must play by those rules.

The following more specific comments and questions are intended as examples of our concerns about the Regulations. They do not represent the totality of our specific concerns that we believe must be addressed by the Chinese government. We would propose consultations with appropriate Chinese officials to discuss these and the other issues raised herein by these far-reaching regulations.

Unclear Scope of Application

The scope of the Regulations' application is largely unclear. For example, Chapter IV sets forth the requirements for "foreign-invested" international maritime businesses and auxiliary businesses and then states that "situations not regulated in this chapter refer to other relevant sections" of the Regulations. (Article 31). What is the meaning of "situations?" Does this mean that Chapter IV has no application to those "situations"? For instance, what part of the Regulations deals with port calls by vessels operated by non-Chinese international shipping businesses at Chinese ports--bearing in mind that Chinese shipping companies do not have to register liner shipping routes, schedules and port calls rotations with the United States government. Another example is Article 23(d) which requires a licensee to inform the Chinese government when it sets up overseas branches. If Article 23 applies to foreign-flagged vessel operators, it is highly problematic, because operators of foreign-flagged vessels will be required

to inform the Chinese authorities of their business operations outside of China, which in turn raises obvious jurisdictional concerns.

Licensing Requirements

The imposition of extensive licensing requirements on international shipping and related business activities in the Regulations is a major concern of the United States. Such requirements represent a major interference in the shipping market that is seriously out of step with international practice. For example, the Regulations appear to require a business license to operate vessels to and from PRC ports. (Articles 5-15). One of the stated requirements for such a license to perform vessel operations is the operation of at least one PRC-flagged vessel; to qualify as an "international maritime transportation business" a company must operate at least one Chinese-flag vessel. (Article 6). Since it appears that no non-Chinese company can operate Chinese-flagged vessels, it is possible that no non-Chinese company could qualify for an "international maritime transportation business" license. But, even if this is not what is intended, these licensing requirements are restrictive as they seek to impose a nationality requirement as a condition to market access.

Foreign Investment

The regulations impose significant limitations on foreign investment and involvement in PRC international ocean transportation and auxiliary activities. As an example, the Regulations include provisions permitting -- subject to PRC approval -- foreign companies to form joint ventures with Chinese interests in vessel operating and auxiliary businesses, including agency, management, stevedoring, warehousing and container yard and container freight station operations. However, foreign capital is limited to 49% and the chairman and general manager are to be appointed by the Chinese partner. The MOC Notice appears to allow already-operating WFOEs to continue to do these types of businesses, but limits new licenses to limited joint ventures. Prior to the Regulations, new vessel operators were not required to be joint ventures. This is a significant new barrier to entry and, as such, a major step backward.

Competitive Practices

We have identified a number of instances where the Regulations are inconsistent with U.S shipping laws as well as many areas where they are little more than broad and vague prohibitions that do not reflect widely used commercial shipping practices. For example, under U.S. law, the Ocean Shipping Reform Act of 1998 does not allow government authorities to interfere in freight rate determinations, except for carriers that receive substantial government support and direction. More fundamentally, we take issue with a regulatory regime, such as the Chinese, that vests primary authority with an agency or agencies that also supervise and promote Chinese shipping companies and for which regulatory impartiality does not appear to be a distinguishing trait.

Cabotage

Foreign operators are excluded from "domestic shipping business in China" including by use of Chinese-flag vessels to conduct business. (Article 28). Presumably, this bar does not apply to international cargo remaining aboard a vessel moving between Chinese ports or to international cargo transshipped to a Chinese-flag vessel for onward carriage from one Chinese port to another -- although the regulation is not sufficiently specific to be certain.

Investigation and Penalties

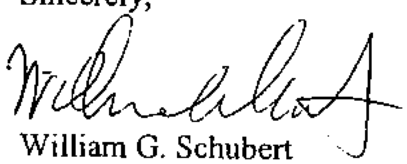
The regulations provide for investigations by a "special investigation unit" of various PRC departments to assure compliance with the competitive behavior standards. Article 37 states that "relevant experts" can participate in an investigation. This raises the possibility that representatives of Chinese shipping companies could take part in probes of their non-Chinese competitors, as had happened during the activities of the Shanghai Shipping Exchange. If it is found that an entity has "impaired fair competition," "restrictive measures," including suspension of rates and the frequency of liner service, are authorized. (Articles 35-41). Criminal penalties can also be imposed for violations of the Regulations. (Article 54). That provision is new and disturbing, especially in light of the current problematic nature of Chinese criminal procedure.

Taiwan, Hong Kong and Macao

The regulations are unclear as to foreign shipping company access to trade between the Mainland and Hong Kong, Taiwan, and Macao, which are each separate customs territories and WTO members. While it appears from the regulations that a foreign shipping company may be approved to carry cargo between the Mainland and Hong Kong or Macao (Articles 57-58), (a) the standards for such approval are unstated, and (b) if approval were to be denied, the regulations would have a major adverse impact on foreign carriers serving the PRC.

In addition, if the Regulations were to be interpreted to impose rules on shipping between Taiwan and third territories (e.g., the United States), this would be a cause of serious concern to the United States.

Sincerely,



William G. Schubert
Maritime Administrator